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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,580	01/05/2004	Kazuhisa Ueki	YAMA:063	3104

7590 02/20/2007
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EXAMINER

WARREN, DAVID S

ART UNIT	PAPER NUMBER
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2837

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/751,580

Applicant(s)

UEKI, KAZUHISA

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 4 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/27/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "fifth section" leads the Examiner to believe that it was Applicant's intention to have claim 5 depend from claim 4. Is so, claim 5 would be allowable if the dependency is corrected. Otherwise, the Applicant must clarify, e.g., by describing the third and fourth sections.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imaizumi et al. (5,241,128) in view of Nakata (5,831,195). (Please note: The "Imaizumi" reference used in this rejection is not the same Imaizumi reference used in the previous rejection.) Regarding claim 1, Imaizumi discloses a storage device for storing accompaniment pattern data having a plurality of sections (60), a detector that

Art Unit: 2837

detects a specific note in the performance data (13), a reproduction device that simultaneously reproduces the performance data and a section of the accompaniment data (40), and a controller that controls the reproduction device to switch reproduction of the section of the accompaniment pattern data to another section of the accompaniment pattern data when a reproduction point of the performance data by the reproduction device reaches a point corresponding to the detected specific note (col. 9, lines 5 - 21).

Imaizumi states:

The pattern change selecting switch 25 is provided for selecting whether or not an accompaniment pattern is to be automatically changed during the performance of automatic accompaniment in accordance with a keyboard performance state (key touch or depressed key number).

Imaizumi does not disclose the use of also storing the performance data in a storage device. Nakata discloses storing both performance and accompaniment data (see first sentence of Abstract). It would have been obvious to one of ordinary skill to include the performance storage device of Nakata in the teachings of Imaizumi. The motivation for making such a combination is that the storing a performance is crucial in the music industry (for both artistic, e.g., to listen and edit a composition, and sales purposes). Furthermore, it is noted that the "key number" of Imaizumi, in MIDI protocol, would be identical, and thus synonymous with the stored note parameters of Nakata. In other words, the key numbers of both Imaizumi and Nakata are the same in MIDI protocol. Finally, the "specific note" of Applicant's claims 1 and 6 are deemed to be synonymous with the "key number" of Imaizumi, since each specific note, in MIDI protocol, has a

Art Unit: 2837

unique number. Regarding claims 2 and 5, Imaizumi discloses assigning a accompaniment pattern in accordance with a detected key number (a note), however, Imaizumi does not disclose detecting a first note and controlling the accompaniment to begin at the "top or end of a measure." However, the invention of Imaizumi would operate with the detection of any note, including the first note or the last. Imaizumi also discloses changing patterns after a certain number of bars in accordance with bar lines (fig. 5; see sentence bridging cols. 13 and 14; the Examiner maintains the "right position" is synonymous with "top or end" of a bar since to change a pattern within a bar would not be suitable to most musicians). One of ordinary skill would think to begin the accompaniment on the first note of the performance and to begin the accompaniment at the bar line and to end with the last note. The motivation for incorporating these features into Imaizumi is that ~~use~~^{one} would like accompaniment to begin from the beginning of the piece and that, generally speaking, accompaniment patterns that don't begin at the beginning of a measure would sound awful to most listeners. Furthermore, one of ordinary skill would want an "introduction" pattern to begin in the first note and an "ending" pattern to begin on the last note. Regarding claim 6, all limitations have been discussed supra.

Allowable Subject Matter

3. Claims 3 and 4 are allowed. For Reasons for Allowance, please see the previous Office Action (mailed July 27, 2006).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dsw



DAVID S. WARREN